

STATE OF NORTH DAKOTA
ATTORNEY GENERAL' S OPINION 90-29

Date issued: November 13, 1990

Requested by: R. Jon Fitzner
Valley City City Attorney

- QUESTIONS PRESENTED -

I.

Whether a park district may adopt an ordinance pertaining to the use or possession of alcoholic beverages which may be contrary to a municipal ordinance on the same subject matter.

II.

Whether a municipality may adopt an ordinance prohibiting the use of alcoholic beverages in parks owned by a park district created by and within the territorial limits of the municipality.

- ATTORNEY GENERAL' S OPINION -

I.

It is my opinion that a park district may adopt an ordinance pertaining to the use or possession of alcoholic beverages which may be contrary to a municipal ordinance on the same subject matter.

II.

It is my further opinion that a municipality may adopt an ordinance prohibiting the use of alcoholic beverages in parks owned by a park district created by and within the territorial limits of the municipality if no ordinance has been adopted by the park district on the same subject matter.

- ANALYSES -

I.

A municipality has authority to receive property for use as a park or public grounds. The police powers of the municipality apply to such property and the municipality may impose ordinances and penalties to protect and preserve that property. N. D. C. C. ' 40-49-01.

The municipality may also create a park district by ordinance. N. D. C. C. ' 40-49-03. Although created by a municipal ordinance, N. D. C. C. ch. 40-49

establishes a park district as a political subdivision with various powers including the power to sue, to contract, and to receive and transfer property.

N. D. C. C. ' 40-49-04. A board of park commissioners governs the park district and possesses many of the same powers enjoyed by governing boards of other political subdivisions. See N. D. C. C. ' 40-49-12.

In City of Fargo v. Gearey, 33 N.D. 64, 156 N.W. 552 (1916), the North Dakota Supreme Court described the status of a park district in relation to a municipality of which it may territorially be a part. The court stated:

The statutes (sections 4055-4063) contemplate a radical change in the distribution of governmental authority. Certain powers are taken from the city council and vested in an elective park commission. . . . The present act is comprehensive and designed as complete legislation on that subject. It was intended that those cities adopting it should have a park commission with certain sole and exclusive powers incidental and necessary to the acquirement, maintenance, control, and improvement of city parks, boulevards, and ways. Under it the park district by its commission exercises to the full the statutory powers granted and as corporate agents for the city. The park district is at least coextensive with the city limits. Chapter 71, S.L. 1915. Nowhere in the act can there be discerned any intent that any of its powers should be exercised under the supervision, control, or direction of any other body or agent of the city. It creates an exception to the general law governing cities applicable to those cities only who adopt it. To that extent the general law governing cities must be taken as amended by its provisions as to those cities electing to proceed under it, as in the case at hand. It is the corporate agent for the administration of city parks, possessing all the powers expressly granted by statute and those necessarily implied from those granted.

City of Fargo v. Gearey, at 553.

N. D. C. C. ch. 40-49 recognizes the status of a park district as a political subdivision independent of a municipality by granting the board of park commissioners sole authority to maintain, govern, and improve park district property. N. D. C. C. ' 40-49-12(1) provides, in part:

the board shall have the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon.

In addition, the board of park commissioners is authorized to pass all ordinances necessary to give effect to the powers granted to the board by the Legislative Assembly and to impose penalties not to exceed \$500 for violation of those ordinances. N. D. C. C. ' 40-49-12(3).

The North Dakota Legislative Assembly has also empowered the board of park commissioners to employ a police force (N. D. C. C. ' 40-49-12(5)) and has vested full and exclusive jurisdiction of all actions pertaining to violation of park district ordinances in the municipal judge. N. D. C. C. ' 40-49-17.

A municipality's power over park property is limited once a park district has been organized. N. D. C. C. ' 40-05-01(9) provides:

Powers relating to parks -- Planting grass and trees -- Powers respecting parks. To regulate the planting of trees and grass on boulevards, berms, parks, parkways, and public grounds, and to exercise the same powers as are granted to a board of park commissioners respecting the parks of the municipality, if any, until the municipality has been organized into a park district.

The power of the board of park commissioners to govern park district land necessarily includes the authority to govern conduct of persons upon that land. This conduct may include the use and possession of alcoholic beverages upon park district property. Because a park district is a political subdivision independent of a municipality, it may adopt such ordinances within its powers to govern park district property even though the ordinances may conflict with municipal ordinances on the same subject matter.

It is therefore my opinion that a properly adopted park district ordinance may restrict or authorize the use and possession of alcoholic beverages within and upon park district property and establish penalties for violation of the ordinance. The ordinance is enforceable in a municipal court as any other ordinance adopted by the municipality itself would be.

II.

N. D. C. C. ' 40-05-01(1) authorizes a municipality to adopt such ordinances which are proper and necessary to carry into effect the powers granted to the municipality or required for the general welfare of the municipality. Among the powers granted to a municipality is the power to regulate the use of alcoholic beverages. Ordinances adopted to regulate the use of alcoholic beverages are applicable to all areas within the territorial limits of the municipality.

However, as more fully discussed above, the enumerated powers of a municipality and the exercise of those powers by that municipality, may be subject to the authority assumed by a board of park commissioners over park district property. N. D. C. C. ' 40-05-01(9). Although a municipal ordinance pertaining to the use and possession of alcoholic beverages may otherwise have city-wide impact, a park district ordinance establishing different requirements for the use or possession of alcoholic beverages will have precedence over the municipal ordinance as to conduct occurring upon or within park district property. The municipal ordinance is neither amended nor repealed by the enactment of the park district ordinance. Rather, the municipal ordinance is not applicable as to park district property when the board of park commissioners has adopted an ordinance upon the same subject matter.

In those cases where the board of park commissioners has neither adopted an ordinance governing the use or possession of alcoholic beverages within park district property, nor assumed exclusive jurisdiction over conduct within park district property, the municipal ordinances on that subject will be enforceable upon the park district property. Although a park district is a political subdivision independent of a municipality, the failure of a park district to adopt an ordinance governing conduct upon park district property does not create a "no-man's land" where such conduct is beyond the reach of law enforcement authorities and the penalties which may be imposed in a municipal court. Absent an ordinance adopted by a park district on the same subject matter, a municipality can, by ordinance, prohibit the use of alcoholic beverages in parks owned by a park district created by and within the territorial limits of the municipality.

ATTORNEY GENERAL' S OPINION 90-29
November 13, 1990
Page 5

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

Assisted by: Robert P. Bennett
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